Supreme Court of the United States.

OCTOBER TERM 1903.

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No. 273.

GRANVILLE RIPPEY, PLAINTIFF IN ERROR,

vs.

THE STATE OF TEXAS, DEFENDANT IN ERROR.

IN ERROR TO THE COURT OF CRIMINAL APPEALS OF THE STATE OF TEXAS.

BRIEF FOR DEFENDANT IN ERROR.

C. K. BELL,
Attorney General.
T. S. BRIGGS,
Assistant Attorney General.
Counsel for the State of Texas, Defendant in Error.

VON BOECKMANN-JONES COMPANY, PRINTERS, AUSTIN, TEXAS.

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BRIEF OF COUNSEL FOR DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

The statement of the case in brief of counsel for plaintiff in error (pp. 1-11) is agreed to as a correct presentation of the case and need not be repeated here.

For convenience of reference, the Local Option Statute of Texas, being Article 3384 to 3399, Title 69, Revised Civil Statutes, and Article 402, Code Criminal Procedure, together with the provision of the Constitution authorizing such legislation, are printed in full as an appendix to this brief.

The contentions of plaintiff in error are succinctly stated in the first and second paragraphs of the assignments of error on page 23 of the record, and are as follows:

"The Court of Criminal Appeals erred in affirming the judgment of the county court of Grayson county, Texas, because the laws of the State of Texas, as embodied in Article 402 of the Penal Code of the State, as well as in Title LXIX of the Revised Statutes of the State of Texas,

and especially Articles 3384 to 3399 of said Revised Statutes, and under which enactments a conviction in this case was had, are violative of the Constitution of the United States, in that said laws abridge the privileges and immunities of citizens of the United States, and deprive certain citizens and class of citizens, and especially plaintiff in error, of liberty and property without due process of law, and deny to many citizens and class of citizens within the jurisdiction of the State of Texas the equal protection of the laws."

"The Court of Criminal Appeals of the State of Texas further erred in affirming the judgment of conviction against plaintiff in error because the laws of the State of Texas aforesaid constitute class legislation within the meaning of the law, and are antagonistic to the essential principles of free republican government, in that they discriminate in favor of certain persons and citizens holding opposite views, and deny equal rights to a large portion of the citizenship of Texas and of the United States, and bestow exclusive privileges upon a large class of other citizens of the State of Texas and of the United States, and which exclusive privileges are not in consideration of public services rendered."

What further follows in the assignments of error in this case, are only amplifications of the propositions stated above, in their application to the various provisions of the law.

The Local Option Law of Texas provides for an election to be held in any county or subdivision thereof, or in any city or town, to determine whether or not the sale of intoxicating liquors shall be prohibited in such territory. If a majority of the votes cast are in favor of such prohibition, upon declaration and publication of the result, it shall thereafter be unlawful to sell intoxicating liquor in the prescribed territory for which the election was held, and by a criminal statute (Article 402, Criminal Code), appropriate penalties are provided for such offense.

This law is not peculiar to Texas, but, at least in its general features, is in force in several of the other States of the Union.

In Texas the enactment of the law is expressly authorized by the present Constitution of the State. (Art. 16, Sec. 20, of the Constitution. (See Appendix.)

BRIEF.

PROPOSITION I.

The right to engage in the business of selling intoxicating liquors is not a "privilege or immunity of citizens of the United States" within

the meaning of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

AUTHORITIES.

Bartemeyer vs. Iowa, 18 Wall., 129-133.
Giozza vs. Tiernan, 148 U. S., 657, 661-62.
Vance vs. W. A. Vandercook Co., 170 U. S., 438-444.
Crowley vs. Christenson, 137 U. S., 86-91.
The "privileges and immunities" protected are only those flowing from Federal citizenship.
Slaughter House cases, 16 Wall., 37.

PROPOSITION II.

The laws in question do not deprive any person of "liberty or property" within the meaning of the Fifth and Fourteenth amendments to the Constitution.

AUTHORITIES.

Mugler vs. Kansas, 123 U. S., 623.
Kid vs. Pearson, 128 U. S., 1.
Beer Co., vs. Massachusetts, 97 U. S., 25-33.

PROPOSITION III.

The laws in question do not deny to any person within the jurisdiction of the State of Texas the equal protection of the law.

AUTHORITIES.

Magoun vs. Illinois Trust & Savings Bank, 170 U. S., 283-293.
Barbier vs. Connally, 113 U. S., 27-31.
Powell vs. Pennsylvania, 127 U. S., 678-683.
Busch vs. Webb., 122 Fed. R., 655-669.
Ex parte Fields, 39 Tex. Crim. App. R., 50.
Rippey vs. State, 68 S. W. R., 687, and 73 S. W. R., 15.
Kimberly vs. Morris, 10 Tex. Civ. App. Rep., 592-596.

ARGUMENT.

It is quite too late now to raise constitutional objections to laws which have the effect to prohibit the sale of intoxicating liquors. Such laws come clearly within the ordinary police powers of the State, whether they absolutely prohibit the manufacture and sale, within the State, as in the case of the law of Kansas under discussion in Mugler vs. Kansas (123 U. S., 623), or, in the milder form of law authorizing local option prohibition (Ex parte Burnside, 86 Ky., 429; Territory vs. O'Connor

5 Dak., 411), or local municipal regulation (Crowley vs. Christensen, 137 U. S., 86), they control or prohibit the traffic in particular localities.

By reported decisions of this court, and other courts, Federal and State, such laws have been held to be within the police powers of the States and outside of the prohibitions of the Federal Constitution.

There are, however, certain provisions of the Texas Local Option Laws which, it is insisted, discriminate in favor of certain individuals or classes and against other individuals or classes, and are obnoxious to that provision of the Fourteenth Amendment of the Federal Constitution which forbids legislation on the part of any State, the effect of which will be to "deny to any person within its jurisdiction the equal protection of the laws."

These obnoxious provisions are found in Article 3395, Revised Statutes, which is as follows:

"Art. 3395. The failure to carry prohibition in a county shall not prevent an election for the same from being immediately thereafter held in a justice's precinct or subdivision of such county as designated by the commissioners' court, or of any town or city in such county; nor shall the failure to carry prohibition in a town or city prevent an election from being immediately thereafter held for the entire justice's precinct or county in which said town or city is situated; nor shall the holding of an election in a justice's precinct in any way prevent the holding of an election immediately thereafter for the entire county in which the justice's precinct is situated; but when prohibition has been carried at an election ordered for the entire county, no election on the question of prohibition shall be thereafter ordered in any justice's precinct, town or city of said county until after prohibition has been defeated at a subsequent election for the same purpose, ordered and held for the entire county, in accordance with the provisions of this title; nor in any case where prohibition has carried in any justice's precinct shall an election on the question of prohibition be ordered thereafter in any town or city of such precinct until after prohibition has been defeated at a subsequent election ordered and held for such entire precinct."

It is provided by Article 3393 that when an election has been once held, for any county or subdivision thereof, whatever may be the result of such election, no other election shall be held within the same prescribed limits for the space of two years.

If the voters of a county have either carried or defeated prohibition, at any election held under the law, the question is settled, so far as the county is concerned, for two years, and it is the same with regard to an election for a town or city or other subdivision of a county. So far there is absolute equality between those who favor and those who oppose the law.

By the subsequent article (3395) of the statute, however, it is pro-

vided that if, at an election held for the entire county, the result should be in favor of prohibition, no election shall be held under the law for any subdivision of the county until the law shall have been defeated in an election held for the entire county.

That is; where the people of the entire county have *voted the law in* it shall remain in force, in the entire county, until the people of the entire county *have voted it out.*

In the same way, when the people of an entire justice's precinct have voted the law in, it shall remain in force in the entire justice's precinct until the people of the entire justice's precinct have voted it out, or until it has been voted out of the entire county.

On the other hand, if at an election for the entire county, the people should fail to vote the law in for the entire county, that shall not prevent an election at any time thereafter for any city or town, or other subdivision of the county, to determine the question for such locality, and, in the same way, if at an election for a justice's precinct the people should fail to vote the law in for the entire precinct, that shall not prevent an election at any time thereafter to determine the question for the entire county nor shall failure to carry prohibition in an election for a town or city prevent an immediate election for the entire justice's precinct.

Here is where, plaintiffs in error contend, the discrimination and inequality come in. This apparent discrimination and inequality, however, disappear upon a close examination of the provisions of the Act in which it is claimed they inhere.

Until the law is put in operation, the general condition is that under which the right to sell liquor exists and is protected. Starting from this general condition, if the people of a county under the forms provided, determine that liquor shall not be sold in the county, that condition prevails over the entire county until the people of the county determine otherwise under the forms provided. The law simply recognizes the right of the voters of the entire county to abrogate the general condition by putting and continuing in force over the entire county the prohibition of the sale of liquor, regardless of the fact that a majority of the voters in some one or more subdivisions of the county may be opposed to the law.

In like manner the law recognizes the right of a majority of the voters of a justice's precinct or other subdivision of a county, containing a town or city, to abrogate the general condition by putting and continuing in force throughout the entire justice's precinct or other subdivision, the prohibition of the sale of liquor regardless of the fact that a majority of the voters of such city or town may be opposed to the law, and when once put into operation in the county or larger subdivision, the condition of prohibition must continue until it is abrogated by a

vote of the entire county, or larger subdivision in which it has been put in operation. On the other hand if, at an election held for the entire county, the result is against the law, the general condition continues; the case stands if no such election has been held, and the people of subdivisions of the county are free to hold an election under the law, as if no election for the county had been held.

The law gives to the people of the county the right, if they so choose, to put the law in operation in that county. If they do not so choose, it gives to people of certain subdivisions of the county, if they choose, the right to put the law in operation in such subdivision. If neither a majority of the people of the entire county nor of any subdivision thereof are in favor of the adoption of the law for the county or subdivision respectively, then a majority of the people of any city or town in such subdivision may adopt the law for such city or town.

We hope the court will pardon this seemingly prolix statement as to the meaning, purpose and effect of these provisions of the statute, as we are persuaded that a clear understanding thereof will render any argument unnecessary to show the court that they do not involve any denial to any person of "the equal protection of the laws" within the meaning, purpose or intent of the inhibitions of the Federal Constitution.

No distinction is here made between persons; no right is given to one person that is denied to another, or to one class of persons that is denied to another class, under like circumstances.

Wherever the right is given to one person or class of persons to petition for an election under the law, it is given to all persons under the same circumstances and conditions; wherever it is denied to one it is denied to all under the same circumstances and conditions.

When prohibition has been put in force in a county by a majority of the voters of the county, the law says to all alike this condition must prevail throughout the county, until a majority of the voters of the county declare otherwise under the forms of law. When prohibition has been put in force in a justice's precinct by a majority of the voters of the precinct, the law says to all alike, this condition must prevail throughout the precinct, until a majority of the voters of the precinct or the entire county declare otherwise under the forms of law.

Plaintiffs in error contend that, inasmuch as a failure to adopt the law at an election held for the entire county does not prevent a subsequent election to determine that question for a subdivision of the county; so the adoption of the law by the voters of the county should not prevent a subsequent election to determine the question for a subdivision of the county, and that this inequality in the operation of the law is an unlawful discrimination against them and persons in like cases, amounting to a denial of the equal protection of the laws. But the conditions are entirely different.

In the one case the people of the county say by their votes, "we do not desire that the prohibition law be adopted *for this entire county.*" This they say and no more, leaving the voters of any subdivision free to decide the question for themselves as to such subdivision, which is in no way inconsistent with the unfavorable result of the election for the county.

In the other case the people of the county say by their votes, we desire that the prohibition law be enforced throughout the entire county. To allow the people of any subdivision of the county at a subsequent election to say that the law shall not be enforced in such subdivision is inconsistent with the result of the election held for the entire county, is equivalent, in effect, to denying to the people of a county the right to put the law in force over any subdivision of the county in which a majority of the voters should be opposed to the law, and destroys the autonomy of the county in this particular.

Allowing an election to be held for a subdivision of the county after a failure to put the law in operation in the entire county at an election held for the county, does not have this effect, because the county has not thereby declared that the law shall not be put in operation in any part of the county, but only that it shall not be put in operation in the entire county. An affirmative vote, at an election held for the county, is conclusive and binding upon the entire county, including all subdivisions thereof, until reversed by the entire county, while a negative vote is not conclusive upon the subdivisions of the county, but this difference in results arises naturally, if not necessarily, from the nature of the question submitted. This seems to be one of the inequalities in the law complained of by plaintiffs in error, but this certainly can not be considered as a denial to them, or to any person or class of persons, of the equal protection of the laws under the most latitudinous construction of this provision of the Constitution.

The meaning of the language "the equal protection of the laws" has never been exactly defined. In fact it has been stated that a more particular definition than the words themselves afford is impracticable. (Brannon's Fourteenth Amendment, p. 319.)

It was stated by this court in In re Kemmler (136 U. S., 436), "The object of the Fourteenth Amendment in respect to citizenship was to preserve equality of right and to prevent discrimination between citizens, but not to radically change the whole theory of the relations of the State and Federal government to each other and of both governments to the people."

We are sure that this court will agree with us that in dealing with this question, of such momentous importance to the peace, good order and morals of communities affected thereby, the Legislature of the State should be given as free a hand as is consistent with the restrictions of the

Federal Constitution. All of the constitutional objections here urged against the law in question have been many times fully, in some cases very emphatically, answered by this court, with the exception of those based upon the particular features of the law embodied in Article 3395.

Plaintiffs in error contend that these features of the law must be eliminated in obedience to the restrictions of the Fourteenth Amendment, in that they constitute class legislation, confer privileges upon those in favor of the prohibition of the sale of intoxicating liquor which are denied to those opposed to prohibition, and, in fine, deny to them and others similarly situated, the equal protection of the laws.

To obviate this objection, the law should provide either that after an election in a county at which a majority of the voters have declared in favor of prohibition for the entire county, any city or town or other subdivision of the county should be allowed, at once to nullify the will of the voters of the entire county as to such subdivision by "voting prohibition out," or that after such election for the entire county, at which prohibition was defeated, no subdivision of the county should be allowed to have prohibition enforced in such subdivision.

So far as this particular feature is concerned, there would be probably no objection to the law on the ground that it allowed a majority of the voters of the county to impose their will upon the entire county, in voting to put the law in operation, if it allowed such majority to impose their will upon the entire county in voting not to put it in operation.

There is, candidly, this much of inequality in the law, which goes upon the theory that a majority of the voters of the county should be allowed to put the law in force throughout the entire county, whether a majority in one or more subdivisions favor it or not, and that each of the recognized subdivisions, should likewise be allowed to put the law in operation in such subdivision whether the balance of the county favors it or not.

There is not an absolute and ideal equality of right to vote prohibition out and to vote it in—to put the law in operation and to abolish it.

But do the provisions of the Federal Constitution relied upon by plaintiff in error aim to secure such ideal equality, or to secure equality at all *as to the two sides of a question* like this, having no relation to the question of the equality of rights of individuals? There can be no question that "the law operates equally and uniformily upon all persons in similar circumstances." No right to vote is given to a prohibitionist that is not given to an anti-prohibitionist. No right to petition for an election is given to the one that is not given to the other, nor can there, under the law, arise any case in which an election would not be ordered upon the petition of the one, as of the other.

Under certain circumstances and according to certain rules and formalities, an election will be ordered, whether upon the petition of pro-

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hibitionists or anti-prohibitionists. Except under these circumstances, no election will be ordered upon the petition of either. If there be inequality in the operation of the law, in that favor is shown *to one side of the question* that is not shown to the other, it is still well within the police powers of the State, and, we think, entirely without the restrictive provisions of the Federal Constitution.

Referring to the equality demanded by the constitution, we beg to quote from the opinion of this court in Magoun vs. Illinois Trust & Savings Bank, 170 U. S., 293: "What satisfies this equality has not been and probably never can be precisely defined. Generally it has been said that it 'only requires the same means and methods to be applied impartially to all the constitutents of a class so that the law shall operate equally and uniformly upon all persons in similar circumstances.' Kentucky Railroad Tax cases, 115 U. S., 321-337. It does not prohibit legislation which is limited, either in the objects to which it is directed or by the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike under like circumstances and conditions, both in the privilege conferred and the liabilities imposed. Hayes vs. Missouri, 120 U. S., 68. Similar citations could be multiplied. But what is the test of likeness and unlikeness of circumstances and conditions? These expressions have almost the generality of the principle they are used to expound, and yet they are definite steps to precision and usefulness of definition, when connected with the facts of the cases in which they are employed. With these for illustration it may be safely said that the rule *prescribes no rigid equality and permits to the discretion and wisdom of the State a wide latitude as far as interference by this court is concerned.* Nor with the impolicy of a law has it concern. Mr. Justice Field said in Mobile County vs. Kimball, 102 U. S., 691, that this court is not a harbor in which can be found a refuge from ill-advised, unequal and oppressive State legislation. And he observed in another case: 'It is hardly necessary to say that hardship, impolicy or injustice of State laws is not necessarily an objection to their constitutional vaidity.'

"The rule, therefore, is not a substitute for municipal law; it only prescribes that that law have the attribute of equality of operation, and equality of operation does not mean indiscriminate operation on persons merely as such, but on persons according to their relations."

There is a wide difference between allowing a majority of the voters of a county to determine that intoxicating liquors shall not be sold in the county, or any part or subdivision of it, regardless of the wishes of a majority of voters in certain portions or subdivisions, who may be opposed to the law; and allowing a majority of such voters in a county to determine that intoxicating liquors may be sold in every portion or

subdivision of such county, regardless of the wishes of a majority of voters of such subdivision.

Except by those who deny to the State the right to prohibit the sale of liquor at all, no objection can be urged to the local option feature of the law allowing each county to prohibit such sale throughout the county. It is a different matter to forbid to local communities and subdivisions of a county the right to prohibit the sale of liquor within their limits also. The law simply recognizes and gives force to this difference arising from the very nature of the question.

The county may prohibit if it chooses to do so. If it does not choose then any local subdivision may do so for itself.

There are some legal propositions so fanciful and imaginative, with so little of solid substance to be grasped, that these features really constitute the difficulty in answering them.

With the highest respect for the learned counsel for plaintiffs in error, the objection to this law that it "denies to persons within the jurisdiction of the State of Texas the equal protection of the laws" seems to be a proposition of this kind.

On page 18 of brief of counsel for plaintiff in error Rippey occurs the following:

"The enactment of the Legislature of Texas clearly operates to disfranchise and to stifle for a period of two years all citizens within the territory to be affected, who are opposed to prohibition, and denies them the right for such period of time to legislate upon the question legally. While upon the contrary it apparently confers that right upon those who favor prohibition to vote therefor as often as they shall see fit."

It would appear that according to counsel's construction of the law, an election in any county or subdivision of a county may be at once ordered after an election at which prohibition is defeated, while such election can not be ordered for two years after such election at which prohibition is carried. Counsel says that the law *apparently* has this effect. It seems to us entirely clear that the statute can not be so construed, but can only be construed to prohibit an election for any county or subdivision thereof, within two years after an election held for such county or subdivision without regard to the result of such previous election, thus "stifling and disfranchising for a period of two years" prohibitionists and anti-prohibitionists alike.

If it be held that this provision that a second election shall be held for the same locality only after two years, "abridges the privileges and immunities of citizens of the United States" it would follow that to relieve the law of this objection citizens should be allowed to vote upon the question as often as the time for giving notices, etc., would permit. This would result, practically, in a perpetual, unintermittent fever

of campaigning on this question, with elections recurring several times each year, with the burdensome expense necessarily attendant thereon. If only such a law would meet this objection, then local option prohibition is utterly impracticable, and resort must perforce be had to absolute State prohibition after the fashion of the Constitution of Kansas, under discussion in the Mugler case.

We hardly think counsel for plaintiff in error, Rippey, intends seriously to contend that to limit local option elections to one every two years in and for the same locality, "abridges the privileges of citizens of the United States," in violation of the Constitution, but only that such "abridgement" must apply to prohibitionists and anti-prohibitionists alike, which in fact is done by the plain import of Article 3393, in so far as elections for the same locality are concerned. In so far as the provisions of Article 3395 may deprive prohibitionists of "privileges and immunities" granted to anti-prohibitionists and thus also deprive them of the equal protection of the laws," that is an objection which we have endeavored to answer elsewhere in this brief.

We quite agree with counsel for plaintiff in error, Rippey, that "the court can approach the decision of this question with the utmost calmness and with perfect freedom to expound the Constitution as applicable to the state of facts presented in this record," but we can not agree with them that this court can do so "without stopping to consider whether any right of the State is involved, or whether any function of the State could be in any manner paralyzed by its decision." On the contrary we submit that a most important right of the State is directly involved in the decision of this case.

The law under discussion has been enacted by the Legislature of the State, as, upon the whole, and in consideration of all of the conditions prevailing in this State, the best means of dealing with a matter of very great importance.

It has been upheld by all of the courts of this State and declared free from any violation of the Federal or State Constitution. The particular feature of the law attacked in this case have not been adopted without serious consideration. We are quite sure this court "will stop to consider" the right of the State to pass this law. Any hysterical or sentimental view of the matter is to be deprecated, but it is neither hysterical nor sentimental to claim for the State the right and the power, in this and in all other cases, to pass such laws as may seem proper to its law-making body, subject only, so far as this court is concerned, to the limitations and inhibitions of the Federal Constitution.

It is respectfully submitted that the judgments of the court of Criminal Appeals in this case should be affirmed; that the moderate and conservative local option laws of the State should be allowed to stand and

the State not be forced to adopt absolute State prohibition in order to protect itself against the recognized evils of the liquor traffic.

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APPENDIX.

CONSTITUTION OF TEXAS.

Article 16, Section 20. The Legislature shall at its first session enact a law whereby the qualified voters of any county, justice's precinct, town, city (or such subdivision of a county as may be designated by the commissioners' court of said county) may by a majority vote determine from time to time whether the sale of intoxicating liquors shall be prohibited within the prescribed limits.

TITLE LXIX.—LOCAL OPTION.

Article 3384. [3227] The commissioners' court of each county in the State, whenever they deem it expedient, may order an election, to be held by the qualified voters of said county, or of any justice's precinct, or such subdivisions of a county as may be designated by the commissioners' court of said county, or any town or city therein, to determine whether or not the sale of intoxicating liquors shall be prohibited in such county, justice's precinct, or subdivision of such county, or in any town, or city; provided, it shall be the duty of said commissioners' court to order the election aforesaid whenever petitioned to do so by as many as two hundred and fifty voters in any county, or fifty voters in any justice's precinct, or subdivision of such county, as shall be designated by said court, or in any city or town, as the case may be; provided, that if the justice's precinct, or subdivision of such county, embrace within its limits an incorporated town or city or portions thereof, then such election shall only be ordered when the petition for the same is signed by qualified voters, not less than one-tenth in number of the total vote cast for Governor at the next preceding general election in such incorporated town or city; and in case an election is asked for a subdivision

of such county, the petition shall describe such subdivision by metes and bounds, and the said petition and description of said subdivision shall be recorded in full in the minutes of the commissioners' court, and such description shall be embraced in the notice given for such election; provided, no city or town shall be divided in making any such subdivision.

Art. 3385. [3228] The preceding article shall not be so construed to prohibit the sale of wines for sacramental purposes, nor alcoholic stimulants as medicines in cases of actual sickness, but such stimulant shall only be sold upon the written prescription of a regular practicing physician, dated and signed by him, and certified, on his honor, that he, the physician, has personally examined the applicant, naming him, and that he finds him actually sick and in need of the stimulant prescribed as medicine; provided, that a physician who does not follow the profession of medicine as his principal and usual calling shall not be authorized to give the prescription provided for in this article; and provided further, that no person shall be permitted to sell more than once on the same prescription, nor shall any person be permitted to sell at all on the prescription of a physician not herein authorized to give it, nor on a prescription which is not dated, signed, and certified as above required; provided, that every person selling such stimulants upon the prescription herein provided for, shall cancel such prescription by endorsing thereon the word "cancelled," and file the same away.

Art. 3386. [3229] When the commissioners' court, of their own motion, or upon the petition provided for in article 3384, shall order the election as herein provided for, it shall be the duty of said court to order such election to be held at the regular voting place or places within the proposed limits, upon a day not less than fifteen nor more than thirty days from the date of said order, and the order thus made shall express the object of such election, and shall be held to be prima facie evidence that all the provisions necessary to give it validity, or to clothe the court with jurisdiction to make it, have been fully complied with; provided, that if there is no regular voting place within the proposed limits of a subdivision less than a justice's or voting precinct, then the commissioners' court shall designate some suitable place within said subdivision, where said election shall be held, and said place shall be named in the notices of election, and said court will appoint such officers to hold such election as are now required to hold general elections.

Art. 3387. [3230] The clerk of said court shall post, or cause to be posted, at least five copies of said order at different places within the proposed limits, for at least twelve days prior to the day of election, which election shall be held and the returns thereof made in conformity with the provisions of the general laws of the state, and by the officers of election appointed and qualified under such laws.

Art. 3388. [3231] At said election those who favor the prohibition

of the sale of intoxicating liquors within the proposed limits shall have written or printed on their tickets the words "For prohibition," and those who oppose it shall have printed or written on their tickets the words "Against prohibition."

Art. 3389. [3232] The officers holding said election shall, in all respects not herein specified, conform to the existing laws regulating elections; and after the polls are closed shall proceed to count the votes; and within ten days thereafter make due report of said election to the aforesaid court.

Art. 3390. [3233] Said court shall hold a special session on the eleventh day after the holding of said election, or as soon thereafter as practicable, for the purpose of opening the polls and counting the votes; and if a majority of the votes are "For prohibition," said court shall immediately make an order declaring the result of said vote, and absolutely prohibiting the sale of intoxicating liquors within the prescribed limits, except for the purposes and under the regulations specified in this title, until such time as the qualified voters therein may at a legal election held for that purpose by a majority vote decide otherwise; and the order thus made shall be held to be prima facie evidence that all the provisions of law have been complied with in giving notice of and holding said election, and in counting and returning the votes and declaring the result thereof.

Art. 3391. [3234] The order of court declaring the result and prohibiting the sale of such liquors shall be published for four successive weeks in some newspaper published in the county wherein such election has been held, which newspaper shall be selected by the county judge for that purpose. If there be no newspaper published in the county, then the county judge shall cause publication to be made by posting copies of said order at three public places within the prescribed limits for the aforesaid length of time. The fact of publication in either mode shall be entered by the county judge on the minutes of the commissioners' court. And entry thus made, or a copy thereof certified under the hand and seal of the clerk of the county court shall be held sufficient prima facie evidence of such fact of publication.

Art. 3392. [3235] If a majority voting at such election vote "Against prohibition," the court shall make an order declaring the result, and have the same entered of record in the office of the clerk of said court.

Art. 3393. [3236] No election under the preceding article shall be held within the same prescribed limits in less than two years after an election under this title has been held therein; but at the expiration of that time the commissioners' court of each county in the State, whenever they decree it expedient, may order another election to be held by the qualified voters of said county, or of any justice's precinct,

or such subdivision of a county as may be designated by the commissioners' court of such county, for the same purpose; provided, it shall be the duty of such court to order the election aforesaid whenever petitioned to do so by as many as two hundred voters in any county, or fifty voters in any justice's precinct or subdivision of such county, as the case may be, to order an election for the same purpose, which election shall be ordered held, notice thereof given, the votes returned and counted, and the result declared and published, in all respects as provided by this title for a first election; and the order granting such other elections, as well as that declaring the result, shall, if prohibition be carried, have the same force and effect and the same conclusiveness as are given to them in the case of a first election by the provisions of this title.

Art. 3394. [3237] When such second election results against prohibition, the court shall enter an order setting aside the previous order enforcing prohibition, and shall officially announce and publish the same as provided where the election resulted in prohibition.

Art. 3395. [3238] The failure to carry prohibition in a county shall not prevent an election for the same being immediately thereafter held in a justice's precinct or subdivision of such county as designated by the commissioners' court, or of any town or city in such county; nor shall the failure to carry prohibition in a town or city prevent an election from being immediately thereafter held for the entire justice's precinct or county in which said town or city is situated; nor shall the holding of an election in a justice's precinct in any way prevent the holding of an election immediately thereafter for the entire county in which the justice's precinct is situated; but when prohibition has been carried at an election ordered for the entire county, no election on the question of prohibition shall be thereafter ordered in any justice's precinct, town or city of said county until after prohibition has been defeated at a subsequent election for the same purpose, ordered and held for the entire county, in accordance with the provisions of this title; nor in any case where prohibition has carried in any justice's precinct shall an election on the question of prohibition be ordered thereafter in any town or city of such precinct until after prohibition has been defeated at a subsequent election ordered and held for such entire precinct.

Art. 3396. [3239] When any such election has been held and has resulted in favor of prohibition, and the aforesaid court has made the order declaring the result, and the order of prohibition, and has caused the same to be published as aforesaid, any person who shall thereafter, within the prescribed bounds of prohibition, sell, exchange or give away, with the purpose of evading the provisions of this title, any intoxicating liquors whatsoever, or in any way violate any of the provisions of this title, shall be subject to prosecution, by information or indictment, and shall be punished as prescribed in the Penal Code.

Art. 3397. [3239a] At any time within thirty days after the result of the election has been declared, any qualified voter of the county, justice's precinct or subdivision of such county, or in any town or city of such county in which such election has been held, may contest the said election in any court of competent jurisdiction, in such manner as has been or may hereafter be prescribed; and should it appear from the evidence that the election was illegally or fraudently conducted; or that by the action or want of action on the part of the officers to whom was intrusted the control of such election, such a number of legal voters were denied the privilege of voting as had they been allowed to vote might have materially changed the result; or if it appears from the evidence that such irregularities existed as to render the true result of the election impossible to be arrived at, or very doubtful of ascertaining, the court shall adjudge such election to be void, and shall order the proper officer to order another election to be held, and shall cause a certified copy of such judgment and order of the court to be delivered to such officer upon whom is devolved by law the duty of ordering such election.

Art. 3398. In all cases where any person, firm or association of persons pursuing the occupation of liquor dealers under license issued in accordance with the laws of this State has been or shall hereafter be prevented from pursuing such occupation for the full time to which he would be otherwise entitled by reason of the adoption of local option in any county, precinct, subdivision of such county, town or city, a proportionate amount of the taxes paid by him for the unexpired term shall be refunded to him.

Art. 3399. It is hereby made the duty of the district judges to give this law in charge to the grand juries; and it is made the special duty of the county attorneys to file or have filed a complaint in the county court of said county against all houses, and the keepers thereof, used for the sale, exchange or gift of any kind of intoxicating liquors, in any county, justice's precinct or subdivision of such county, or of any town or city in such county in this state when local devices are resorted to, to prevent or avoid detection of the keeper thereof, and upon said complaint being filed with any justice of the peace, describing the place where the device is kept, and the name of the person violating this law, if known, said justice of the peace shall issue his warrant commanding any sheriff or constable to search said place, and, if the law is being violated, to arrest the person or persons so violating the law; and it shall be the duty of the sheriff of the county wherein such house or place where such device is kept, for the sale or gift of intoxicating liquors, to demand admission into the same, and upon admittance being refused, the sheriff is hereby authorized and required by law to force open the same and arrest and hold for trial before the courts all such persons who shall violate any of the provisions of this title; and it is

the duty of the county judges and justices of the peace, having jurisdiction in the premises, to see that this law is rigidly enforced; provided, no arrest or search shall ever be made until the sheriff shall first procure a warrant therefor, issued by the proper authority.

CRIMINAL STATUTE.

Art. 402. [378] If any person shall sell any intoxicating liquor in any county, justice precinct, city or town in which the sale of intoxicating liquor has been prohibited under the laws of this state, or if any person shall give away any intoxicating liquor in any such county, justice precinct, city or town, with the purpose of evading the provisions of said laws, he shall be punished by fine of not less than twenty-five nor more than one hundred dollars, and by imprisonment in the county jail for not less than twenty nor more than sixty days.